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July 18, 2016

CELA

Via E-Mail

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 7068

Dear Mr. Jordan:

I serve as counsel for James Mowrer and Mowrer for Iowa ("the Committee"). By way of background, Mowrer for Iowa is the authorized committee of James Mowrer. Mr. Mowrer was a candidate for the United States House of Representatives for the 4th District of Iowa in the primary and general elections in 2014 and is the Democratic nominee for the 2016 election.

I write to respond to a complaint filed against the Committee by Adam Burke. The complaint alleges that Mr. Mowrer received payments from the Committee outside the window of time permitted by the Federal Election Commission ("FEC") regulations.

As a candidate for Congress during the primary and general elections in 2014, Mr. Mowrer was permitted to receive compensation from the Committee from the date of the filing deadline for access to the primary election ballot up to, and including, the date of the general election. 11 C.F.R. § 113.1(g)(1)(i)(I). When calculating the permitted compensation amount, the FEC regulations provide that a candidate may receive the lesser of the following: "the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate." *Id.* In the year prior to his becoming a candidate, Mr. Mowrer earned a salary that was less than the minimum salary paid to Congressional Representatives. Therefore, the Committee was permitted to pay Mr. Mowrer a salary that equaled the earned income that Mr. Mowrer received in 2013, the year prior to his becoming a candidate. 11 C.F.R. § 113.1(g)(1)(i)(I).

The regulations require that payment to candidates be computed on a pro-rata basis. 11 C.F.R. § 113.1(g)(1)(i)(I). The FEC has interpreted pro-rata as having two possible definitions: (1) the candidate's aggregate salary over the course of his candidacy must not exceed the

permissible amount; or (2) the maximum salary must be pro-rated for each month. See LeSueur for Congress '04, Eddie "Eddie" Ingram, Treasurer and Clinton B. LeSueur, Statement of Reasons, MURs 5433, 5435, 5459 and 5596, at 2 (Aug. 18, 2005).

Payment to Mr. Mowrer was permissible from the Iowa primary filing deadline of March 14, 2014 up to and including the date of the general election on November 4, 2014—a period of seven months and twenty-two days. Therefore, Mr. Mowrer could be paid for a total of 236 days. Mr. Mowrer's wages equaled \$56,027 in 2013, the year prior to when Mr. Mowrer became a candidate. When calculated as a percentage of days of the year, Mr. Mowrer was permitted to earn \$36,225.68 in aggregate compensation from the Committee during his candidacy in 2014. Mr. Mowrer received gross payments totaling \$18,500 from the Committee during this time period. Mr. Mowrer's aggregate compensation during the permissible window totaled approximately one-half the permitted maximum. Therefore, there is no violation of the pro-rata and maximum salary provisions of the FEC regulations.

The Complaint alleges that Mr. Mowrer received salary payments from the committee after the general election. After further review of relevant FEC regulations and the Committee's FEC filings, Mr. Mowrer concedes that some payments were disbursed to him after the date of the general election. Mr. Mowrer received salary payments on November 15, 2014 and December 5, 2014, totaling gross payments of \$5,000 (\$3,997.5 net). A chart showing the dates and amounts of compensation to Mr. Mowrer is below:

Date	Gross	Net	Pay period start	Pay period end
06/02/2014	\$1,000.00	\$893.50	05/16/2014	05/30/2014
06/18/2014	\$1,000.00	\$893.50	05/31/2014	06/15/2014
07/02/2014	\$1,000.00	\$893.50	06/16/2014	06/30/2014
07/18/2014	\$1,000.00	\$893.50	07/01/2014	07/15/2014
08/01/2014	\$1,500.00	\$1,276.25	07/16/2014	07/31/2014
08/18/2014	\$1,500.00	\$1,276.25	08/01/2014	08/15/2014
09/03/2014	\$1,500.00	\$1,276.25	08/16/2014	09/03/2014
09/17/2014	\$2,500.00	\$1,998.75	09/01/2014	09/15/2014
10/03/2014	\$2,500.00	\$1,998.75	09/16/2014	09/30/2014
10/17/2014	\$2,500.00	\$1,998.75	10/01/2014	10/15/2014
11/03/2014	\$2,500.00	\$1,998.75	10/16/2014	10/31/2014
11/15/2014	\$2,500.00	\$1,998.75	11/01/2014	11/15/2014
12/05/2014	\$2,500.00	\$1,998.75	11/16/2014	11/30/2014

Under a strict reading of the Commission's regulation, the outstanding excess net salary payments to Mr. Mowrer, however, would total only \$1,435.72. First, Mr. Mowrer repaid \$2,028.78 to the Committee on May 16, 2016. Second, under this strict reading, Mr. Mowrer was entitled to receive a partial payment on November 15, 2014, as payment for his salary from

November 1, 2014 through the date of the general election on November 4, 2014. The Committee paid salaries on a bi-monthly basis; payment for the period from November 1 through November 15, 2014 was paid to staff on November 15, 2014. Therefore the Committee calculates the permitted payment to Mr. Mowrer for the first four days in November 2014 as \$666.67 gross compensation (\$533 net). However, the Commission's regulations are not clear as to whether the pay periods must fall within the regulation's window or whether the window is used merely for calculating the pro-rated annual compensation that is permitted to be received by the candidate. If the appropriate reading of the regulation is the latter, then Mr. Mowrer's compensation for 2014 was entirely permissible since his aggregate pro-rated compensation for 2014 did not exceed his pro-rated compensation of 2013. Therefore, under this interpretation, Mr. Mowrer would not be required to repay any amount for 2014 compensation. Ultimately, the Commission must clarify which is the proper interpretation of the regulation.

The Complaint also alleges that Mr. Mowrer received healthcare insurance reimbursements prior to the filing deadline in the primary election. Mr. Mowrer acknowledges he received healthcare reimbursement amounts as follows: \$1,381.45 on October 18, 2013; \$1,381.45 on December 13, 2013; \$1,381.45 on January 3, 2014; \$1,898.15 on February 14, 2014; and \$1,420.15 on September 7, 2014.

At the outset, the Committee understands the September 7, 2014 reimbursement in the amount of \$1,420.15 as proper. As outlined above, Mr. Mowrer's permitted compensation during his candidacy did not exceed the maximum amount permitted, and would not exceed this maximum should the \$1,420.15 reimbursement be included in the total. Further, the Committee offered healthcare reimbursements to all staff, although most staff members elected not to receive reimbursements. This September 2014 reimbursement to Mr. Mowrer was made in good faith as a benefit offered to staff members. The Committee therefore considers this healthcare reimbursement as permitted by the FEC regulations as part of the benefits provided to similarly situated employees of Mowrer for Iowa. As for the 2013 health insurance payments, although Mr. Mowrer had a good faith belief that he was entitled to healthcare reimbursements under the same terms as other employees, Mr. Mowrer was not eligible to be placed on payroll in the year prior to the election. Therefore, if the Commission determines that these payments were improper, Mr. Mowrer is prepared to return the insurance reimbursement payments to the Committee.

Due to the small excess net payments to Mr. Mowrer, the Committee requests that the FEC decline to pursue enforcement. Heckler v. Chaney, 470 U.S. 821 (1985). The remaining healthcare reimbursements, from October 2013 to February 2014, total \$6,042.50. The Committee requests that the FEC decline to require Mr. Mowrer to repay these reimbursements and the \$1,435.72 in salary payment referenced above. Although these payments were made outside the candidacy window, Mr. Mowrer's permitted compensation during the candidacy window is well below the maximum amount permissible; it does not exceed this maximum even if the \$7,478.22 in salary and healthcare reimbursements is included in his total compensation. In addition, as explained above, Mr. Mowrer has already repaid the Committee \$2,028.78, which was the amount the Committee believed to be paid to Mr. Mowrer for the post-election period. Assuming the Commission finds all salary payments are permissible, it should provide credit to

Mr. Mowrer for this repayment in the event that it determines that any portion of Mr. Mowrer's healthcare reimbursements are not permissible.

Mr. Mowrer respectfully requests that, if the FEC intends to pursue this matter, that enforcement be directed to the Alternative Dispute Resolution program.

Mr. Mowrer received these payments in good faith and neither he nor the Committee intended to violate any FEC regulation or campaign finance law. With the advice of counsel, Mr. Mowrer and the Committee will take steps necessary to ensure compliance with all FEC regulations and campaign finance law in the future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Neil Reiff', with a stylized flourish at the end.

Neil Reiff
Counsel for Mowrer for Iowa
and James Mowrer